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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

AARON CHARLES SAMUEL,

Defendant and Appellant.

B203815

(Los Angeles County
Super. Ct. No. SA058000)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Robert O'Neill, Judge. Affirmed as Modified.

Cynthia A. Thomas and Randy S. Kravis, under appointment by the Court of
Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Sarah J.
Farhat, Paul M. Roadarmel, Jr., and Roy C. Preminger, Deputy Attorneys General,
for Plaintiff and Respondent.

Defendant Aaron Charles Samuel was charged with murder (Pen. Code, § 187, subd. (a)),¹ receiving stolen property (§ 496, subd. (a)), and discharging a firearm with gross negligence (§ 246.3, subd. (a)). After pleading no contest to the receiving stolen property charge, he was tried by a jury on the remaining charges. The jury convicted him of discharging a firearm with gross negligence, acquitted him of murder, and deadlocked on the lesser included offense of voluntary manslaughter. In a retrial on the voluntary manslaughter charge, a second jury also deadlocked. On the People's motion, the trial court dismissed the voluntary manslaughter charge. As to the convictions of receiving stolen property and grossly negligent discharge of a firearm, the court placed defendant on probation for five years subject to various terms and conditions, including that he serve 307 days in custody (time served), that he stay away from places where drug users congregate, and that he not associate with gang members.

Defendant appeals from the judgment of conviction (order granting probation), contending: (1) the evidence is insufficient to support his conviction of discharging a firearm with gross negligence, and (2) the probation conditions that he stay away from places where drug users congregate and that he not associate with gang members are constitutionally overbroad. We find the evidence sufficient to support the conviction of grossly negligent discharge of a firearm, and modify the conditions of probation to require a knowledge requirement.

EVIDENCE

Our summary of the relevant evidence is from the first trial and focuses on the conviction of grossly negligent discharge of a firearm.

¹

All undesignated section references are to the Penal Code.

Defendant, who was 17 years old, had a close relationship with his cousin, Kennetha Warren, to whom he referred as his sister. Kennetha's long-time boyfriend, the father of her son, was Michael Gatewood. Gatewood, a member of the Playboy Gangster Crips gang, frequently abused Kennetha and had once threatened to kill her. He carried a gun almost every day in a black holster in his waistband, and had shown it to defendant many times.

On the evening of October 1, 2005, defendant, Kennetha, and several other friends and family members caravanned in cars to the Santa Monica pier. Gatewood did not accompany them.

According to Kennetha, after arriving at the pier, the group went down to the sand. The others put down blankets and started eating, but Kennetha and defendant walked up to the stairs to the pier. While they were walking on the pier, Gatewood suddenly appeared. Apparently upset because Kennetha had not told him she was going to the pier, he declared, "You all tryin' to play me." He struck Kennetha in the jaw, knocking her down. He then threatened, "You gonna die for this, bitch," and "I ought to throw your ass over the pier." Defendant told Gatewood to stop, and helped Kennetha to her feet.

Gatewood then confronted defendant, declaring again that they were trying to "play" him. When defendant said, "I'm tired of you putting your hands on her," Gatewood struck him, and the two fought briefly. Gatewood, much the larger of the two, knocked defendant down and tried to throw him over the side of the pier, but defendant was able to grab onto the railing, and Kennetha grabbed his shirt. Gatewood stopped fighting and backed away. Kennetha told defendant to run. Defendant moved away to a distance where Gatewood could not get to him.

Defendant walked along the pier, about 20 feet ahead of Kennetha and Gatewood. Gatewood was cursing and continued to fume that they had tried to "play" him.

Kennetha noticed that she had lost an earring, and went back to look for it, accompanied by defendant. When she found it, Gatewood was nearby, and he and defendant began to argue again. Gatewood had his hands in his pockets and declared several times, “Fuck Naps,” which is a derogatory and threatening gang term. Defendant, who was about eight feet away, replied, “Fuck that,” and “This 60 Crip,” or “I’m from 60,” referring to the Rolling 60’s Crips Gang. Although defendant was not a gang member, he tried to act like one, and knew of the rivalry between Gatewood’s gang and the Rolling 60’s Crips.

Kennetha testified that as Gatewood was “skipping around, doing his gangbang thing,” defendant pulled out a gun and fired a shot into the air. At the time, he was perhaps 30 feet from Gatewood. As Kennetha described it, defendant was “some type of far distance, like just movin’ around in the far distance. He wasn’t like close,” “[h]e was a pretty far distance.” When defendant fired, there were people around him and more than 100 people in all on the pier.

Gatewood said something like, “You better tell him something before I kill him.” Kennetha told defendant to put the gun away and leave. Defendant left in a “runnin’-type skip . . . not too fast, not too slow.” He passed between two security guards without stopping to talk to them.

Asked at trial whether she was testifying that defendant fired to protect her from Gatewood, she testified, “I didn’t say that. Aaron [defendant] shot in the air, one shot,” and then left without her.

According to Aytek Yelioglu, a cart vendor on the pier, defendant stopped on the pier, looked toward Gatewood and Kennetha, and said, “Do you know who I am?” He then raised his gun toward the sky, fired, and walked away. When he fired, he was perhaps 25 to 30 meters from Gatewood and Kennetha.

Wayne Dickens, the manager of the pier cart vendors, testified that there were a “couple hundred” people on the pier. When the gunshot went off, people nearby scattered.

Other evidence (not here relevant) showed that in a confrontation on the beach a few minutes later, defendant shot and killed Gatewood. This killing was the basis of the murder charge of which defendant was acquitted, and the lesser included offense of voluntary manslaughter on which two juries deadlocked.

After the killing of Gatewood, Santa Monica police officers detained defendant and Kennetha fleeing through a parking lot near the pier. One officer retraced their steps and found a gun underneath a car. The gun was later matched to an expended shell casing found on the pier and three bullets taken from Greenwood’s body. In a pre-booking search of defendant, another Santa Monica police officer found a gun holster clipped to defendant’s belt.

In a videotaped interrogation by Santa Monica Police Detective John Henry that was played for the jury, defendant initially denied firing a gun on the pier. Later, he admitted pulling out a gun on the pier because he felt threatened, and claimed to have shot downward toward the water. He also said that he shot Gatewood on the beach because he felt threatened.

In defense, defendant presented evidence of his good character and of Gatewood’s violent character.

DISCUSSION

Sufficiency of the Evidence

Defendant contends that the evidence is insufficient to support his conviction of grossly negligent discharge of a firearm (§ 246.3, subd. (a).) We disagree. Of course, we review the entire record in the light most favorable to the judgment. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.)

A conviction of violating section 246.3, subdivision (a), requires proof that “(1) the defendant unlawfully discharged a firearm; (2) the defendant did so intentionally; [and] (3) the defendant did so in a grossly negligent manner which could result in the injury or death of a person.” (*People v. Alonzo* (1993) 13 Cal.App.4th 535, 538.) “Gross negligence” refers to conduct that is ““such a departure from what would be the conduct of an ordinarily prudent or careful [person] under the same circumstances as to be incompatible with a proper regard for human life, or, in other words, a disregard of human life or an indifference to consequences.”” [Citations.]” (*Id.* at pp. 539-540; see *People v. Robertson* (2004) 34 Cal.4th 156, 168.)

Here, substantial evidence showed that defendant intentionally fired a gun once into the air while surrounded by people on a crowded pier. Undoubtedly his act was grossly negligent and could have resulted in the injury or death of persons nearby.

Defendant appears to argue that he acted in self defense and defense of Kennetha. Other than his statement to Detective Henry that he fired because he felt threatened by Gatewood, no evidence supported a claim that he acted in self defense or defense of others. Kennetha testified, in substance, that defendant was at a safe distance from Gatewood, perhaps 30 feet away, a “pretty far distance.” She denied that her testimony should be construed to say that defendant fired to protect her from Gatewood: “I didn’t say that. Aaron [defendant] shot in the air, one shot,” and then left without her.

Moreover, the evidence showed that defendant’s firing his gun was an act of bravado, not fear. According to Kennetha, immediately before he shot, he responded in kind to Gatewood’s gang challenge, declaring allegiance to the Rolling 60’s Crips. According to cart vendor Aytek Yelioglu, immediately before firing, defendant s said, “Do you know who I am?” On this evidence, the jury

reasonably rejected any claim that defendant fired in self defense or in defense of Kennetha.

Defendant argues that he acted not with gross negligence, but with “mistaken judgment” as a result of his confrontation with Gatewood and a desire to protect Kennetha. The degree of his mistaken judgment, however, clearly passed the threshold of gross negligence, unreasonably placing the persons around him on the crowded pier in danger.

Probation Conditions

In placing defendant on probation, the trial court orally imposed conditions that, in relevant part, required defendant “not to associate with any gang members [and] not engage [in] any gang activity,”² and “to stay away from places where [drug] buyers, users or sellers congregate.” Defendant contends that these conditions are unconstitutionally overbroad, absent a requirement of knowledge by defendant. We agree. (See *In re Sheena K.* (2007) 40 Cal.4th 875, 878-879, 891-892 [probation condition ordering that defendant “not associate with anyone disapproved of by probation” was unconstitutionally vague unless modified to require that defendant have knowledge that probation officer disapproved of particular person].)

We order the conditions modified as follows. First, the challenged language of the gang-related condition shall read: Defendant shall not associate with any person known by defendant to be a member of a gang, and shall not knowingly

² The court’s minute order states that defendant is not to “associate with any person believed to be or known to be a member of a gang.” However, the court’s oral pronouncement controls over the minute order (see *People v. Mesa* (1975) 14 Cal.3d 466, 471), and thus we must presume that the gang condition contained no knowledge requirement.

engage in any gang-related activity. Second, the challenged language of the drug related condition, in the context of the entire condition, shall read: Defendant shall not use or possess any narcotics, dangerous or restricted drugs or associated paraphernalia, and *shall stay away from places where defendant knows drug users, buyers, or sellers congregate*, except in an authorized drug counseling program.

DISPOSITION

The gang-related condition of probation is modified to read: Defendant shall not associate with any person known by defendant to be a member of a gang, and shall not knowingly engage in any gang-related activity. The drug related condition is modified to read: Defendant shall not use or possess any narcotics, dangerous or restricted drugs or associated paraphernalia, and shall stay away from places where defendant knows drug users, buyers, or sellers congregate, except in an authorized drug counseling program. All other conditions of probation remain the same, and, as so modified the judgment (order granting probation) is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.